STAT

An Eye on the CIA

In the wake of the Iran-contra affair, Congress is seeking to increase its oversight of the intelligence community. Some fear that Congress might overreact.

BY DAVID C. MORRISON

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Trust is the "coin of the realm" in Washington, Secretary of State George P. Shultz said in testimony last summer to the Iran-contra committees.

In no realm of executive-legislative relations may that coin have been more tarnished by the missiles-to-mullahs scandal than in congressional oversight of the intelligence community. As a result, committee hoppers are now bulging with bills aimed at fixing what some regard as faulty procedures that made those murky doings possible.

The measure most likely to win passage would mandate that at least the top congressional leadership be notified of all covert activities within 48 hours of their initiation. Other, less certain, proposals would install an independent inspector general at the CIA, give the General Accounting Office (GAO) access to CIA fiscal accounts, radically revamp the House and Senate Select Intelligence Committees and significantly alter the management of the intelligence community.

This legislative flurry signals the resumption of a heated debate that began in the mid-1970s, when congressional investigations of the CIA's "dirty work" overseas and spying at home prompted enactment of the first notification law, the 1974 Hughes-Ryan Amendment, and the creation of the House and Senate Intelligence Committees.

"For 35 years of the Cold War, nobody much worried about the independence of the CIA, because there was a general consensus on the nature of the threat," observed Harry Howe Ransom, a political science professor at Vanderbilt University and the author of an article on the CIA and the Constitution in the fall 1987 issue of *Armed Forces & Society*. "But that consensus, obviously, doesn't exist any more. So there's going to be another battle about all of this. It's clear that Congress is going to have a greater partnership role in this whole business, even though it probably won't achieve as much accountability as [some] propose."

Most present and former intelligence officers view the renewal of the oversight debate and the possibility of even greater congressional intrusion into their activities with unmitigated alarm. "The intelligence community does not reject or repulse oversight," said 29-year CIA veteran John K. Greaney, executive director of the 3,500-member Association of Former Intelligence Officers. "The better the oversight, the more readily the Congress will support the [community's] requirements." But Congress is "overreacting to its [the community's] role in the Iran-contra investigation," Greaney said. "I think the problem is that you've gotten to a point where it's become fashionable again to be against intelligence."

On the other hand, Georgetown University School of Foreign Service associate dean Allan E. Goodman, who served in the CIA from 1975-81, asserted that the agency "has to get with the mood of the times and stop saying no to every reform proposal and that there are no problems." The United States is "trying to do almost the impossible—to make secret intelligence compatible with democracy," Goodman said. "And it may not be. But I can assure you that Congress will not stand still for another Iran-contra affair, another assassination manual. The leaders of the CIA need to realize that."

TIMELY NOTICE

In a rare Friday and Saturday session late last June, Senate Intelligence Committee members met to wrestle with what was, to them, one of the most disturbing aspects of the Iran-contra affair. The 1980 Intelligence Oversight Act directs the President to inform selected Members of all covert actions "in a timely fashion."

But Congress knew nothing of the arms sales until they were reported in a Beirut newspaper in November 1986, 10 months after President Reagan retroactively signed a "finding" approving missile sales to Iran that had actually begun in August 1985.

" 'Timely fashion' was always contemplated to have been within a couple of days," said committee vice chairman William S. Cohen, R-Maine. "Then we found out in the Iran-contra hearings that the Administration, through the Justice Department, had interpreted 'timely fashion' to mean that the President had unfettered discretion. Our reaction was to say, 'We cannot exert effective oversight if that is the standard.' "

The Senate panel thus sought to restrict the wiggle room that it had allowed in the 1980 law. Members struggled that June weekend with semantic refinements—substituting "contemporaneously," for instance, for the current stipulation that the President keep the Intelligence Committees "fully and currently" notified of findings.

Given the Administration's penchant for creative legal interpretation, the committee members finally decided there was no substitute for specificity. In a July 1 letter to the White House, therefore, the lawmakers urged that all covert actions be preceded by *written* findings; that all executive agencies involved be identified, as well as any third countries or private individuals—by general description, if not by name; and that the President inform at least the Senate Majority and Minority Leaders, the House Speaker and Minority Leader and the chairmen and vice chairmen of the House and Senate Intelligence Committees—the "Gang of Eight"—of all findings "in no event later than within 48 hours" of their signing.

In an Aug. 7 response that formed the basis for a new White House directive on covert operations—National Security Decision Directive (NSDD) 286—Reagan signed on to the Senate recommendations—with a significant stipulation. Notification would not be delayed beyond two working days, the President pledged, "in all but the most exceptional circumstances." In those cases, according to NSDD 286, the high-level National Security Planning Group would reevaluate every 10 days whether to continue delaying notification.

"It then became apparent that we had less than we had before," said Senate Intelligence Committee member Arlen Specter, R-Pa. "Because before, at least, [the President] had an obligation to [notify] in a 'timely' way, and now he was extracting a circumstance where he didn't have to do it at all."

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Former CIA director Stansfield Turner
He likes the idea of an intelligence "czar."

Last September, therefore, Cohen and other committee members introduced a bill (S 1721) that codifies the measures recommended in the July 1 letter. After extensive hearings and floor debate, the Senate approved the bill on March 15 by a surprisingly wide margin, 71-19.

But the debate is far from over. A companion bill (HR 3822) sponsored by House Intelligence Committee chairman Louis Stokes, D-Ohio, and Subcommittee on Legislation chairman Matthew F. McHugh, D-N.Y., is likely to come up for a floor vote before the end of April. And Reagan has threatened to veto the measure if and when it crosses his desk.

In unusual open-door testimony before the House panel in February, CIA director William H. Webster asserted, as have other opponents of the new oversight proposals, that the "unfortunate" Iran-contra business resulted simply from "officials failing to follow existing procedures and rules." Reagan, he said, had already taken "corrective steps" with NSDD 286, and Webster had taken steps of his own to rectify any "shortcomings" in CIA operations revealed by the Iran-contra episode. "In short, significant changes have been made," Webster concluded. "I would respectfully submit that they should be given a chance to work."

Two of Webster's predecessors were split in their views on the legislation. "I don't think it's a world-shaking issue," said William E. Colby, the CIA director from 1973-76, who likened the oversight measure to closing a loophole in a tax bill. "The basic relationship between the Congress and the President on covert action is set," he said. "Congress does have a right to be informed and have a view."

Stansfield Turner's concerns about notification reflect instances when President Carter failed to notify Congress of reconnaissance of the Iranian desert and the purchase of cars and the rental of warehouses in Tehran preceding the abortive 1980 hostage rescue. "Had the CIA told Congress about those, it would have been disclosing a prospective military operation which for reasons of secrecy and security of personnel, the President of the United States was not informing the Congress about," said Turner, who headed the agency from 1977-81.

The Senate bill defines the "special activities" for which it demands 48-hour notification as including any CIA operation "conducted in foreign countries, other than activities intended solely for obtaining necessary intelligence." Turner said his opposition would evaporate if that could be redefined to exclude CIA rescue efforts and CIA support for prospective military operations. "I don't at this point see any objection to notifying [within] 48 hours on a genuine covert action as opposed to these pseudo-covert actions," he said.

But Turner strongly objects to one of the most ubiquitous arguments used against the pending oversight legislation. House Intelligence Committee vice chairman Henry J. Hyde, R-Ill., for instance, in a typical rendition of this argument, recalled that "the famous Canadian caper, where they helped us get six of our diplomats out of Iran, was a three-month operation. They insisted that we not tell anybody, and we didn't. There's no dealing with that situation in this bill."

But Turner said of Canada's assistance, "I don't remember that subject [notification of Congress] ever coming up." Citation of that case "infuriates" him, he added, "because it's wrong and I think the Canadians were so cooperative that we ought not to cast any doubts on their position."

LEGAL QUESTIONS

Among other grounds, the White House has challenged the oversight legislation on its constitutionality. "A notification requirement does not usually on its face raise a constitutional objection," Charles J. Cooper, the assistant attorney general who heads the Justice Department's Office of Legal Counsel, said in an interview. "In this particular area, a rigidly inflexible 48-hour requirement could conceivably place impediments on the President's prerogatives and authorities

that would truly restrain his ability to act."

Proponents of the bill strongly disagree. Cooper "is assuming that there would be a leak; that's the only way [that notification] could serve as a veto," Senate Intelligence Committee chairman David L. Boren, D-Okla., responded in an interview. "We do not exercise a veto, we render our advice. If the President choses not to follow it, he has the authority to proceed ahead."

Morton H. Halperin, director of the Washington office of the American Civil Liberties Union, agrees. "I don't think [the bill] even comes close to areas where Congress can limit the activities of the President," he said.

Constitutional issues seem likely to continue dogging the intelligence oversight debate, just as they have contributed to disputes over the War Powers Resolution. If Congress overrides the threatened presidential veto of the 48-hour notification, Cooper said, "jurisdictional impediments would have to be addressed, but it is not inconceivable that this would be something that would ultimately be addressed in the courts."

Another likely source of serious dispute over the Senate bill lies not with the Administration but with the House. The bill allows the President, if disclosure would pose "grave risk" to "vital security interests," to limit notification to the party leaders in each chamber—a Gang of Four. Boren pressed for this, over Cohen's initial objections, to ensure the broadest possible support for the bill.

Susan M. Mundik

House Intelligence Committee chairman Louis Stokes, D-Ohio
He opposes excluding the Intelligence panels from notification requirements.

"That takes out the Intelligence Committee chairmen," House panel chairman Stokes complained. (It would also leave out the vice chairmen.) Stokes expects the matter to be a central issue at the Senate-House conference that will iron out the otherwise minor differences between the two bills. "I think the House would want to stick pretty much to the current eight," he said.

"The Senate could get caught in the middle," Boren acknowledged, "with the White House saying in some circumstances it should be zero [Members notified] and the House saying that it should always be at least eight." Considering the veto-busting margin by which the bill won Senate approval, Boren's political calculation appears to have been on target. In the more partisan House, however, the Stokes-McHugh bill is likely to travel a rockier road.

For all of the controversy, the intelligence oversight bills now under active consideration are mild compared with other straws in the wind. Some of the toughest measures were urged by former Defense Secretary Clark M. Clifford in testimony before the two intelligence panels. He testified in the 1970s before the Senate investigating committee headed by the late Frank Church, D-Idaho, "at great length, and they came up with some advances, but it wasn't near enough," he said in an interview. "Here, again, the same egregious mistakes are made, and we go through this incredible worldwide embarrassment over the Iran-contra debacle."

What Clifford wants to see now is a stipulation that all funds would be cut off for covert operations that Congress has not been notified about, coupled with criminal sanctions for the individuals running such an operation. "There is no 100 per cent guarantee that you can prevent this from occurring in the future," he said. "I just think you ought to make it more difficult by making it a penalty under law."

Clifford's recommendations have not been acted upon. Nor has any movement been made on a separate bill (S 1818) that Specter introduced last October. Among other things, his bill would provide a mandatory five-year prison term for any federal employee who provides false information to a congressional committee. "The Intelligence Committees have a unique problem because they meet in secret," Specter said. "If somebody testifies falsely in an open hearing, it may be in the newspapers and somebody will come up and say, 'That guy gave you some wrong information; here is the truth.' But if somebody testifies in secret, nobody ever hears about [it], so you can never find it to be wrong."

INDEPENDENT EYES

Other measures under consideration would plunge Congress far more deeply into the CIA's day-to-day doings than it is today. The Specter bill, for instance, also calls for the establishment of an independent inspector general, similar to those operating in 19 other federal agencies. Currently, the CIA inspector general is appointed by, and reports solely to, the agency chief, sometimes preparing only a single "eyes only" report.

Though he had originally wanted to have the CIA inspector general nominated by the President and confirmed by the Senate, Specter said he could accept a compromise in which the CIA director

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Senate Intelligence chairman David L. Boren
A joint Intelligence Committee is a bad idea.

would appoint an inspector general who would also report to Congress. Specter hopes to have the provision included in this year's intelligence authorization bill.

Like many of the proposals now under discussion, this one was recommended in the Iran-contra committees' majority report, which stated that the CIA inspector general "appears not to have had the manpower, resources or tenacity to acquire key facts uncovered by other investigations" of the affair. A House Intelligence Committee aide used stronger language, terming the CIA inspector general system "useless" because it "has not been willing to turn rocks over."

Specter's proposal would permit the CIA director to prohibit the independent inspector general from auditing particularly sensitive operations, provided that the director tells the Intelligence Committees his reason for doing so within seven days. The Defense Secretary has similar authority to exclude that department's inspector general, but has apparently never exercised it.

Colby was not very perturbed by the statutory inspector general idea, though he said it would be better to keep that function internal. Turner said he would have no great objections to the plan so long as the inspector general provided Congress only with an annual summary report. "But then I'm worried that Congress will say, 'Every time you find some fraud or drug smuggling or something illegal, come to us right away,' " he said. "Nobody running an organization wants Big Brother looking over his shoulder."

Scott D. Breckenridge, who served in the CIA inspector general's office from 1962-79, however, was adamantly opposed. CIA inspectors general play a role different from that of their counterparts in other agencies, he said, because they are both chaplains to whom agents come for confidential counseling and internal policemen investigating allegations of wrongdoing in highly sensitive operations. Because junior officers almost never work for that office, Breckenridge contended, the view that CIA inspectors general tread cautiously out of careerism or fear of alienating their colleagues is misguided.

"If the CIA [inspector general] has to give his reports to Congress, I can guarantee that they will become sterile," he warned. "Who wants to be called up before a hostile congressional interrogator?"

It seems unlikely, in any event, that the statutory inspector general scheme will get very far, at least this year. The idea "has some merit," Stokes said, "but it is an area that we have to study a bit more." Boren noted that director Webster is beefing up the agency's inspector general and general counsel offices. If those reforms don't work, he said, "then I'm certainly open to considering an independent inspector general."

In a similar vein, Senate Governmental Affairs Committee chairman John Glenn, D-Ohio, has proposed a bill (S 1458) that would give the GAO access to CIA accounts. Rep. Leon E. Panetta, D-Calif., has introduced a companion bill (HR 3603) in the House, where it has gained 70 co-sponsors.

The CIA is the only federal agency to which the GAO has no entrée, though the accounting office has about two dozen examiners with the security clearances needed to audit the obsessively secretive National Security Agency (NSA) and "black" Pentagon procurement programs. *(See NJ, 4/11/87, p. 867.)*

"What I'm not proposing is that [GAO auditors] become sufficiently intrusive that they would be a hindrance to CIA activity," Glenn said. "But, on the other hand, we monitor every other function of government. And that's how you pick up something like the Iran-contra situation, by monitoring those accounts." GAO auditing of the CIA director's discretionary fund—described as a "significant" amount of money by an Intelligence Committee aide—could be a "tricky area," acknowledged Glenn, who suggested that those funds could be accounted for in the aggregate to ensure confidentiality.

Colby was leery of letting the GAO into the CIA's books. "The GAO has done some very delicate reviews," he conceded. "But when you look at the tendency of the GAO to spread its charter, not just to determine the propriety of spending the money but [also judging] the substance of how a program has worked, it seems to me you just get into a [troubling] realm."

Boren, who is bringing five new auditors onto the Senate Intelligence Committee staff, believes that giving the GAO access to the CIA "would be really bad." The Intelligence Committees were created in the mid-1970s because "we wanted to get away from sharing all of this information with 10 or 15 committees," he said. "Inject GAO into this, and it is a way to once again disperse the jurisdiction of the two committees."

Those proposing to unleash the GAO on the CIA have failed to show that committee auditing procedures "are not currently working," said Stokes, who plans to hire one auditor for the smaller House staff. Nonetheless, he said, he has told Panetta that he is willing to hold hearings on the question. Glenn, who is still waiting for the Senate Intelligence Committee to take action on his bill, said he might offer it as an amendment to the intelligence authorization bill.

Susan M. Muniak

Senate Intelligence panelist Arlen Specter
He wants an independent inspector general.

RESTRUCTURING

One of the most sweeping proposals—found in another Specter bill (S 1820)—would create a politically appointed post of director of national intelligence to oversee the entire intelligence community, as distinct from the CIA directorship, which would become a seven-year tenured position, much like that of the FBI director.

The CIA director has always worn a second hat as the director of central intelligence, with jurisdiction over all the intelligence agencies. *(See NJ, 5/9/87, p. 1110.)*

"It's just not possible for the guy who oversees the CIA to also be the overseer of all the other intelligence operations," Specter said. "The CIA director is really responsible for covert activities and has a conflict of interest, perhaps, in tailoring or molding the findings of the intelligence community to support policies that that person might be pursuing." Specter also argued that the intelligence community has grown to the point that it needs a full-time manager.

"It's a very good idea, and it's one that has added impetus because of Iran-contra," former CIA director Turner said, because "imposing an additional person in the loop would be some additional protection" against the politicization of intelligence and the authorization of illegal covert activities.

Both Turner and Specter acknowledge, however, that a director of na-

tional intelligence must have the staff and the institutional clout needed to work his will on the CIA and the rest of the intelligence community, most of which resides in the Defense Department. "It depends on how the job is structured and what other authority [he] has," Specter said. "The President's assistant for national security has tremendous coordinating responsibilities without having a major agency under him. That is the analogy."

The key authority would be budgetary. As director of central intelligence, Turner took over the task of allotting the budgets for all of the community—for the NSA and the Defense Intelligence Agency, for instance, as well as for the CIA. Before, the intelligence chief had to negotiate budgetary apportionment with the Defense Secretary, in whose over-all budget all of the intelligence funds, including the CIA's, are appropriated. The NSA "did better in the three years when I set up the budget," Turner said. "My being able to make the decision decisively, rather than by compromise, they found, stood them in better stead."

Employees of the non-CIA components of the intelligence community "will tell you privately that they are all in favor of this, but they cannot publicly acknowledge that," a Senate Intelligence Committee aide said. "The biggest opponents of this, of course, are in the CIA; they stand the most to lose" because their top man now also has charge of the entire intelligence community.

Indeed, former CIA deputy director George A. Carver Jr., now a senior fellow at the Center for Strategic and International Studies in Washington, groused that "this idea keeps springing up like a noxious weed and needs to be rooted up as soon as it springs up." Because Specter's proposal, as a Senate aide put it, "gets into a lot of people's pet rocks," his bill is probably unlikely to find its way out of committee anytime soon.

The same goes in spades for a measure (HJRes 48) that Hyde has sponsored and a companion bill (S 2113) that Sen. Alan J. Dixon, D-Ill., has offered to merge the two Intelligence Committees, with their 35 members, into an 18-member joint committee. "The advantage of the joint committee is to narrow the loop of the number of people who have access to very sensitive information," Hyde said. "I have a great fear that other countries will not cooperate with us knowing that whatever they say to us or whatever operations they engage in with us will soon become a matter of public record."

Virtually all of the former CIA officials interviewed favor a joint committee, not surprisingly. No less surprisingly, with the exception of Hyde, the Intelligence Committees' leadership strongly opposes it.

Susan M. Muniak

Rep. Henry J. Hyde, R-Ill.
He proposes a joint intelligence panel.

Because joint committees have been notoriously ineffective, Boren said, a joint intelligence panel would be less able to repel turf raiders from other committees. "What happens over a period of time is that all these other committees get a piece of jurisdiction, then the dissemination of classified information becomes much more widespread," he said. "So the opposite would happen than what the supporters of this measure intend."

Hyde responded that he envisioned a "blue-ribbon committee of our best Senators and Congressmen," with a sweeping budgetary and oversight mandate that would enable it to fend for itself.

The leakage issues Hyde raised have also prompted Rep. Bill McCollum, R-Fla., to introduce a bill (HR 3066) that makes disclosure of classified information by "any officer or employee of the federal government," including Members of Congress, punishable by up to 20 years in jail, whether or not the leaker had any intent to harm the United States. The measure is bottled up in the House Judiciary Committee, from which it seems unlikely to escape. But, a Judiciary Committee aide said, it "is the kind of thing that may shape the debate and spark some action in the 101st Congress," which convenes next January.

A vigorous debate continues over the extent to which congressional leakage is a major problem. In the meantime, the intelligence panels are strengthening their security procedures. Boren and Cohen, for instance, have secured the backing of the Senate leadership to summarily remove any Intelligence Committee member who leaks. In what might be viewed as a test case of this principle, Sen. Patrick J. Leahy, D-Vt., resigned from the panel in January 1987 after giving a reporter access to an unclassified Iran-contra report. (The Administration, ironically, had wanted the report released, but the Intelligence Committee had wanted to sit on it a while longer.)

The committee has also more tightly compartmentalized its staff and mandated that absolutely no documents be removed from the offices. The CIA recently audited the committee's control procedures, Cohen said, and found them more stringent than those in the executive branch. *(See NJ, 8/1/87, p. 2002.)*

Hyde complained that his merger bill, which has 125 co-sponsors, is languishing in the Rules Committee, which is not answering his letters requesting hearings. His best hope is to have Dixon's bill come over from the Senate, he said. But, considering Boren's and Cohen's resistance to a joint committee, that currently appears unlikely.

The only intelligence oversight reform measure that seems likely to grope its way through the fog of controversy this year, in fact, is the 48-hour notification that the Senate has already passed. The measure's proponents contend that the Administration should quit while it is ahead and that its veto threat is shortsighted for a variety of reasons.

For one thing, in sharp contrast with the scandalized mid-1970s intelligence debate, covert actions have come out of the closet in the 1980s, achieving a surprisingly broad political acceptance on Capitol Hill. "There's an interesting point in this entire debate," Cohen observed, "which is that for the first time, Congress has gone on record with the passage of this legislation saying we recognize the need for and the desirability of covert activity to carry out legitimate foreign policy objectives. That has never been stated before in legislative history."

For another thing, if the White House boos the bill from the legislative stage with a veto, there is no shortage of other, tougher acts waiting in the wings. "If we do not pass responsible oversight legislation to ensure accountability on covert actions," Boren warned, "we face the risk that Congress will eventually act to say, 'All right, if the executive doesn't want to keep at least our leadership informed, then we will no longer allow covert actions.' " □